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10/577,180	04/26/2006	John Welin-Berger	Welin-Berger	4053

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EXAMINER

PO, MING CHEUNG

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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08/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/577,180	Applicant(s) WELIN-BERGER, JOHN	
	Examiner MING CHEUNG PO	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-15, 18, 20-23 and 26-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-15, 18, 20-23, 26-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Office Action Summary

1. This is the response to amendment for application 10/577180 filed on 05/26/2009.
2. Claims 2-15, 18, 20-23, 26-32 are pending and have been fully considered. Claims 1, 16-17, 19, 24, and 25 are cancelled.
3. The 35 U.S.C. 112 rejections of claims 4, 10, 15, and 17 have been withdrawn.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 is dependant on claim 19 which has been cancelled. It is unclear what claim 20 is therefore dependant on.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
7. Claims 26, and 2-5, 8, 9, 11, 12, 13, 14, 21,22, 23, 27-29, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over LUDDE (U.S. 525,912) in view of

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MAY (U.S. 4,751,122)..

Regarding claims 26, and 2-5, 8, 9, 11, 12, 13, 14, 21, 22, 23, and 32, LUDDE teaches a fire kindler that is effective for starting either a wood or coal fire. In lines 12 – 20 of page 1, LUDDE teaches **a closely-wound spiral foundation** strip of combustible material which is coated with **a suitable mixture of hydrocarbons and covered a layer of sawdust (combustion improving substances)**, attached to the inner convolution, so that a quickly ignitable kindler is produced. The strip is taught in lines 33 to be **paper**.

LUDDE does not seem to expressly disclose a plastic layer.

However, MAY teaches in lines 30 - 34 of column 1, a pre-formed structure comprising a **paper substrate with a release coating** on one side and a waterproofing pressure sensitive adhesive membrane permanently attached to the other side. MAY further teaches in lines 55 – 57 of column 1 that a **layer of polyethylene (plastic layer)** may be applied just below the release coating.

It would be obvious to one of ordinary skill in the art to add the layer of polyethylene that MAY teaches onto the closely wound spiral foundation strip of combustible material in place of the sawdust that LUDDE teaches.

The motivation to do so can be found in lines of MAY. MAY teaches in lines 8 – 10 that polyethylene is waterproof.

Even though it is not explicitly stated, Examiner is of the position that the kindler that LUDDE teaches inherently may be unwound and lit to provide an initial combustion.

LUDDE teaches in lines 33-61 the process to create the kindler is from a strip of

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rolled paper that is unwound and conducted into a mixture of hydrocarbons.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Regarding claims 8 and 9, that is no reason to believe that the closely-wound spiral foundation that LUDDE teaches does not have the capacity to realign somewhat after crumpling up for the formation of a ball-structure nor any reason to believe that the spiral foundation can not support pieces of firewood resting against said ball structure.

Regarding claim 11, there is no reason to believe that the material content in the structure of the paper strip co-ordinated with the thickness and selected material in the plastic strip are not mutually adapted to give a chosen balance between a structural and stability providing capacity and an energy-and power-releasing capacity generated during combustion.

Regarding claims 12 and 13, LUDDE teaches in lines 47 – 50 of page 1 that each strip of combustible material when cut off has applied to one end of its coated side, a thing projecting sulfur-coated ignition strip of highly combustible material.

Regarding claim 14, sulfur is used and can be considered to be adapted for a selected energy release depending on how much is used.

Regarding claim 21, there is no reason to believe that the strip of combustible material that LUDDE teaches may not be allotted a shape bordering on a quadratic outer shape. Furthermore, aesthetic changes that which have no mechanical function cannot be relied upon to distinguish the claimed invention from the prior art. (Please see MPEP 2144.04 I.)

Regarding claim 22, Fig 1 and 2 of LUDDE clearly shows that the inner portion of the strip of combustible material has a tab grippable by a hand and is extended outside the compact helical shape.

Regarding claim 23, there is no reason to believe that the strip of combustible material and the polyethylene layer would not have allotted the same or substantially the same thickness.

Regarding claims 27, LUDDE does not seem to explicitly state an article of manufacture comprising a dispenser containing a plurality of the fire kindlers.

However, it would be obvious matter of design choice to place a plurality of fire kindlers in a dispenser, since applicant has not disclosed that placing a plurality of the kindlers in a dispenser solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well not in a dispenser with a plurality of other kindlers.

Regarding claim 28, LUDDE does not seem to explicitly state a package comprising a plurality of the kindlers.

However, it would be obvious matter of design choice to place a plurality of fire kindlers in a package, since applicant has not disclosed that placing a plurality of the kindlers in a package solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well not in a package with a plurality of other kindlers.

Regarding claim 29, LUDDE does not seem to explicitly state that the compact, helical shapes is surrounded by plastic, cardboard or paper.

However, it would be obvious matter of design choice to surround the compact kindler with plastic cardboard, or paper, since applicant has not disclosed that surrounding the compact kindler with plastic, cardboard, or paper solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well not in a package with a plurality of other kindlers.

8. Claims 27-28, 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over LUDDE (U.S. 525,912) in view of MAY (U.S. 4,751,122) and further in view of SULLIVAN (U.S. 6,136,053).

The above discussion of LUDDE in view of MAY is incorporated herein by reference.

Regarding claims 27 and 28, modified LUDDE does not appear to disclose the helical formation is co-ordinated in a dispenser construction as individual units or wherein a number of such units are co-ordinated to one and the same package.

However, SULLIVAN teaches in reference claim in column 6 an apparatus comprising a strip of cloth, wherein the strip of cloth has been divided into sections by perforated lines.

It would be obvious to one of ordinary skill in the art to divide the strip of combustible material that LUDDE teaches with the perforated lines that SULLIVAN teaches to form a number of individual units.

The motivation to do so can be found in lines 19 - 22 of column 2 of SULLIVAN. SULLIVAN teaches that it is possible to detach a portion of the strip of cloth to start a fire.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Regarding claim 24, SULLIVAN further teaches in reference claim 2 that a plurality of matches is situated on the cloth.

9. Claims 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over LUDDE (U.S. 525,912) in view of MAY (U.S. 4,751,122) and SULLIVAN (U.S. 6,136,053).and further in view of KAPLAN (U.S. 2,707,581).

The above discussion of modified LUDDE as applied to claims 16 – 17 and, 24 is incorporated herein by reference.

Modified LUDDE does not appear to disclose the strip of combustible material with the polyethylene layer have adjoining and opposite strip-allotted edges provided with one or more seals.

However, KAPLAN teaches a container formed of two sheets of plastic material with the edges sealed in lines 32 - 40 of column 1.

It would be obvious to one of ordinary skill in the art to seal the edges between the strip of combustible material and the polyethylene layer of the helical formation that modified LUDDE teaches with plastic such as taught by KAPLAN in packets.

The motivation to do so can be found in line 28 of column 1 of KAPLAN. KAPLAN teaches that the seal facilitate in stopping any possible leakages.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

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10. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over LUDDE in view of KUNKLE (U.S. 2,974,377).

The above discussion of LUDDE is incorporated herein by reference.

Modified LUDDE does not seem to explicitly teach a desiccant is inserted between the paper strip and the polyethylene membrane.

However, KUNKLE teaches in lines 73 - 75 of column 4 and lines 1 - 11 of column 5 a tape that is composed of an elongated strip of vulcanized butyl rubber polybutene compound extruded onto a paper backing strip. A small amount of zinc oxide is added.

It would be obvious to one of ordinary skill in the art to add a dessicant between the paper strip and the polyethylene membrane.

One of ordinary skill in the art would want to prevent a kindler from being wet and unable to start and a dessicant would ensure that moisture does not impede ability of the kindler to start a fire.

It would be obvious to add the zinc oxide as the dessicant that KUNKLE teaches in between the paper strip and the polyethylene layer that modified LUDDE teaches.

The motivation to do so can be found in lines 7 – 11 of column 5 of KUNKLE teaches that the zinc oxide increases the resistance to deterioration upon exposure to ultraviolet radiation.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

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11. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over LUDDE (U.S. 525,912) in view of MAY (U.S. 4,751,122) and SULLIVAN (U.S. 6,136,053).and further in view of COTE (U.S. 3,155,273).

The above discussion of modified LUDDE as applied to claims 16 – 17 and, 24 is incorporated herein by reference.

Modified LUDDE does not appear to disclose the helical formation strip is surrounded by plastic, cardboard, or paper, for the formation of a unit nor a central hole.

However, COTE teaches a carton with a window cut out of the top wall from which tissues may be extracted in reference claim 1.

It would be obvious to one of ordinary skill in the art to place the helical formation strip that LUDDE teaches in the carton that COTE teaches.

The motivation to do can be found in lines 13 – 21 of column 1 of COTE. COTE teaches that the carton protects the goods inside from dust and permits the removal from at least the top wall of the carton.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

LUDDE does not seem to explicitly state the kindler further comprises a set of matches and a striking surface or a lighter.

However, it would be obvious to one of ordinary skill in the art to combine the kindler that LUDDE teaches with a set of matches and a striking surface or a lighter since a kindler needs an initial flame to start.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Response to Arguments

12. Applicant's arguments filed 05/26/2009 have been fully considered but they are not persuasive. Applicant argues that LUDDE does not teach the long web or strip of rolled paper rolled into a compact form is adapted to be unwound to a non-compacting form for lighting. Examiner disagrees. The mere fact that the long strip of rolled paper that LUDDE teaches may be rolled into a compact form supports the assertion that it has the inherent property of being unwound for lighting. Applicant further argues that LUDDE teaches away from having the ability to be unwound because LUDDE discloses that the ignition strip is more firmly held in position by packing the center convolution with a saw-dust filling. Examiner disagrees. The center convolution being more firmly held in position is not equivalent to not being able to be unwound. Applicant further argues that LDDE does not teach a roll formed of two thin elongate strips and that MAY does not cure the deficiencies of LUDDE. As explained above, LUDDE teaches one thin elongate strip and it would be obvious to one of ordinary skill in the art to add a waterproof membrane as a thin plastic layer to the long strip of rolled paper. The motivation to do so would be because it is waterproof. Applicant further argues that MAY, SULLIVAN, KAPLAN, and KUNKLE does not teach a compact helical shape. LUDDE teaches the compact helical shape. MAY is relied upon to add the thin plastic layer onto LUDDE. SULLIVAN is relied upon to modify the invention that LUDDE teaches which is a long strip of rolled paper. In response to applicant's argument that

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LUDDE and MAY are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, MAY is pertinent to improving the function of a kindler by providing a waterproof membrane. In response to applicant's argument that LUDDE and SULLIVAN are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, SULLIVAN teaches that the fire kindler that LUDDE teaches may be separated into sections. Applicant argues that KAPLAN does not provide any teaching or suggestion of material which are inflammable and therefore cannot be combined with LUDDE. Examiner disagrees. KAPLAN teaches a dispensing container. There is no reason to believe that the invention that LUDDE teaches may not be placed in the dispensing container that KAPLAN teaches. Applicant argues that there is no reason to combine KUNKLE with LUDDE because KUNKLE is not directed to something inflammable. Examiner disagrees. KUNKLE is relied upon for a reason to add zinc oxide, a dessicant to the kindler that LUDDE teaches. It would be obvious to one of ordinary skill in the art to add a desiccant to a fire starting paper strip. However, KUNKLE is used as an example of desiccants that are known in the art.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MING CHEUNG PO whose telephone number is (571)270-5552. The examiner can normally be reached on 9:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571)272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ming Cheung Po
Patent Examiner

/Cephia D. Toomer/

Primary Examiner, Art Unit 1797